Pursuant to the PUCO Staff's discussion of paragraphs 167 and 168, the PUCO Staff asserts that certain CMRS providers be classified as LECs for the purposes of Section 251(b). The PUCO Staff points out that market share, diversity of network, and name recognition are criteria which the FCC should consider when classifying CMRS providers as LECs. The PUCO Staff asserts that certain CMRS providers would have as much market power, or more, as other carriers classified as local exchange providers. It is, therefore, in the public interest to not exclude CMRS providers from the obligations imposed on other carriers that provide local exchange services in competition with the ILEC.

5. Reciprocal Compensation for Transport and Termination of Traffic

c. Definition of Transport and Termination of Telecommunications (¶¶ 230-231)

The FCC seeks comment on whether "transport and termination of telecommunications" under Section 251(b)(5) is limited to certain types of traffic. The FCC states that the statutory provision appears at least to encompass telecommunications traffic that originates on the network of one LEC and terminates on the network of a competing LEC in the same local serving area, as well as traffic passing between LECs and CMRS providers. Also, the FCC seeks comments on whether it also encompasses telecommunications traffic passing between neighboring LECs that do not compete with one another. NPRM at ¶ 230.

The PUCO Staff believes that telecommunications traffic under Section 251(b)(5) encompasses traffic originating on the network of one LEC and terminating on the network of another LEC, including both traffic exchanged between competing LECs as well as traffic exchanged between neighboring LECs that do not compete with one another. The PUCO Staff agrees with the FCC that such traffic also encompasses traffic passing between LECs and CMRS providers.

The FCC states that economic theory dictates that dedicated facilities should be priced on a flat-rated basis. Therefore, the FCC seeks comments on whether the FCC should require that states price facilities dedicated to an interconnecting carrier, such as the transport links from one carrier's switch to the meet point with an interconnecting carrier, on a flat-rated basis. NPRM at ¶ 231. The PUCO Staff strongly agrees that dedicated facilities should be priced on a flat-rated basis. The PUCO Staff recommend that all LECs offer a reciprocal compensation rate structure that consists of flat-rated elements, as well as usage-sensitive [per minute of use (MOU)] elements in order to satisfy the requirement that the rate structure be reflective of how costs are incurred by the providing LEC. The PUCO Staff also recommends that all LECs be required to offer a flat (per port capacity) compensation rate applicable to all rate elements as an option to be available for interconnecting LECs requesting such method of compensation.

d. **Rate Levels** (¶¶ 232-234)

The FCC seeks comments on whether the pricing provisions in Section 252(d) should be viewed independently or whether they should be considered together. This question arises due to the different pricing standards and different language in Section 252(d)(1) relating to interconnection and unbundled network elements and Section 252(d)(2) relating to transport and termination of traffic. The FCC states that the disparity in pricing treatment would require that each ILEC offering be identified as falling within a particular category. NPRM at ¶ 232.

The PUCO Staff believes that the pricing provisions in Section 252(d) cannot practically be viewed independently. Also, the PUCO Staff believes that each ILEC offering would have to be identified as falling within a particular category depending on its use by the interconnecting entity. The example used in the NPRM illustrates that if a specific network element is sold as an unbundled offering by the ILEC to a specific interconnecting entity the same network element cannot be used for the purpose of transport and termination of traffic by the ILEC for the same interconnecting entity.

The FCC states that, in certain instances, transport and termination under reciprocal compensation may be difficult or impossible to distinguish from unbundled elements. The FCC uses the example of transport between an ILEC's central office and an interconnector's network to illustrate the foregoing. The FCC states that, in such a case, the use of different pricing rules for the different categories may create inconsistencies in the pricing of similar services and, thereby, could create economic inefficiencies. Therefore, the FCC seeks comments on whether the statute permits states to use identical pricing rules for each category and, if different rules are used for each, whether it will be possible to distinguish transport and termination from the other categories of service. Additionally, the FCC seeks comments on whether, if two different pricing rules could apply to a particular situation, the FCC should require that the new entrant be able to choose between them. NPRM at ¶ 233.

The PUCO Staff believes that the statute implicitly permits the states to use identical pricing rules for each category (i.e. unbundled elements and transport and termination of traffic), since Section 252(d)(1) provides that just and reasonable rates for unbundled elements be based on the cost of providing such network elements and may include reasonable profit, and

Section 252(d)(2) provides that just and reasonable terms and conditions of transport and termination of traffic be determined on the basis of a reasonable approximation of the additional costs of terminating such a call. Each pricing standard requires prices to be based on the cost of providing the product. An interconnecting LEC will determine if it is economically efficient to purchase unbundled network elements or to provide them itself, based on its own cost as well as how much it can charge other LECs for terminating traffic compensation rate using this self-provisioned network element. Therefore, it is important to establish pricing rules that will allow states to set equivalent prices for the alternative offerings utilizing the same function. In this manner, efficient competition will be encouraged as the appropriate price signal, which plays an important role in investment decisions, will be perceived by competitors. If states rely upon this interpretation in setting prices for both unbundled elements and the transport and termination of traffic, new entrants will not be forced to make investment decisions based on inefficient pricing parameters.

The FCC seeks comment on whether it should establish a generic pricing methodology or impose a ceiling to guide the states in setting the charge for the transport and termination of traffic, and whether any such ceiling should be established using the same principles that might be used to establish any ceiling for interconnection and unbundled elements. Also, the FCC seeks comment on whether the FCC should mandate a floor for state pricing of reciprocal compensation, especially if the competing LEC is required to charge symmetrical rates. NPRM at ¶ 234.

The PUCO Staff recommends that the states establish the ceiling for prices for the transport and termination of local traffic. The PUCO Staff specifically recommends that such ceilings be established on the basis of an imputation test. The ceiling price for transport and termination of local traffic would be set such that it allows the ILEC to pass an imputation test for local traffic in the aggregate (i.e. flat-rated, message, and measured local residence and business traffic) at end user rate levels. The PUCO Staff recognizes that the ceiling may not be the appropriate price level for compensation due to its relationship to costs. This approach does not necessarily use the same principles used to establish ceiling prices for interconnection and unbundled elements, but does take into consideration the rate level relationship discussed in the previous paragraph and does provide economically sound prices. The PUCO Staff recommends that states be permitted to set price floors for reciprocal compensation that incorporate a reasonable contribution to joint and common costs. Specifically, the PUCO Staff recommends that 110% (LRSIC + joint costs) plus joint costs be employed as the price floor for reciprocal compensation.

e. **Symmetry** (¶¶235-238)

The FCC questions whether it should establish principles to govern state arbitration of rates for transport and termination of traffic, as well as state review of BOC statements of generally available terms and conditions. NPRM at ¶ 238.

The PUCO Staff recommends that the FCC refrain from establishing principles for the state arbitration process with regard to rates and symmetry of transport and termination of traffic, as well as state review of BOC statements of generally available terms and conditions. The 1996 Act requires the states to arbitrate open issues that the parties could not successfully negotiate. We believe that, in order to carry out this duty, the states must not be foreclosed from evaluating various positions by FCC-imposed standards or principles. The PUCO Staff fears that, if the FCC establishes standards/principles for the issues that confront the parties in their negotiations, there will be no need for negotiation or arbitration by virtue of those very principles. The 1996 Act directs the FCC to establish regulations to implement Section 251, but the PUCO Staff believes that any such regulations should be a guide for the states' consideration and not hard-and-fast rules that the states are obligated to follow during the arbitration process.

The FCC is considering symmetrical compensation[13] as a possible additional requirement for the transport and termination of traffic, and seeks comment of whether the rate symmetry requirement is consistent with the statutory requirement (in Section 252(d)(2)) that rates set by states for transport and termination of traffic be based on "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and "a reasonable approximation of the additional costs of terminating such calls." NPRM at ¶ 235.

The PUCO Staff believes that setting rate symmetry as a preferred outcome of any negotiation is a reasonable requirement only if symmetry is construed on a rate element by rate element basis. For example, if a new entrant requests interconnection with an ILEC at its tandem office, and the requesting LEC does not have tandem capability, terminating a call on the new entrant's network would only involve the use of local switching and local transport between the interconnection point and the LEC's local switch. On the other hand, terminating a call on the ILEC's network would involve the use of the ILEC's tandem switch in addition to the local switch and the transport between the two switching offices. In this example, the PUCO Staff would not endorse symmetry of the aggregate of rates charged by each LEC,

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13 Symmetrical compensation arrangements are those in which the rate paid by an ILEC to a competitor for the transport and termination of traffic is the same as the rate the ILEC charges the competitor for the same service

but rather endorse symmetry on a rate element basis (i.e. local switching rate element, local transport rate element, etc.). This interpretation is consistent with the language of Section 252(d)(2), which references "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originates on network facilities of the other carrier", and "a reasonable approximation of the additional costs of terminating such calls."

The FCC suggests three options to govern the price setting of the transport and termination of traffic rates by the states during the arbitration process or during the state review of a BOC statement of generally available terms and conditions, and seeks comment on these three options. First, the FCC could allow the states to decide whether to require rate symmetry. Second, the FCC could require the states to impose symmetrical rates. Third, the FCC could permit states to allow the new entrant to charge termination rates higher than the ILEC in particular circumstances. NPRM at ¶ 238.

The PUCO Staff agrees that to encourage productive negotiations and for the sake of administrative simplicity, symmetrical compensation based on the ILEC's rates is a reasonable option for the reasons stated by the FCC in this paragraph of this NPRM. The PUCO Staff also agrees that using the ILEC's costs as a surrogate for the costs incurred by the new entrant, on the assumption that such new entrant is as efficient as the ILEC, could satisfy the requirement of Section 252(d)(2). However, as explained above such a surrogate is appropriate only on a rate element basis. This conclusion is justified in view of the fact that the new entrant will have bargaining power, consistent with that of the ILEC regarding transport and termination of traffic, since new entrants control bottleneck facilities for the termination of traffic directed to their end users. Regarding the concern that a LEC might be able to use its market power and extract a symmetrical rate higher than its relevant costs, it is the PUCO Staff's opinion that this situation can be prevented by reviewing the costs of the ILECs and applying the ceiling recommended by the PUCO Staff.

Regarding the three proposed options for implementing rate symmetry, the PUCO Staff recommends that the states be permitted to decide whether to require rate symmetry. This option will provide the states with the flexibility to take into account all pertinent considerations (e.g., administrative simplicity, bargaining power between carriers, and any difference in cost characteristics of interconnecting networks), prior to a determination that rate symmetry is appropriate. Finally, while the PUCO Staff does not object to allowing a new entrant to charge termination rates higher than rates charged by the ILEC if such rates are cost justified and other circumstances warrant it, we do not believe that the example set forth in paragraph 238 is pertinent. The originator of the call in this scenario would not enjoy the benefits of the premium service provided by the new entrant, hence should not be required to pay an additional charge.

f. **Bill and Keep arrangements** (¶ 239-243)

Under the bill and keep (B&K) arrangement, neither of the interconnecting entities charges the other for terminating traffic that originated on the other network. The FCC states that proponents of B&K arrangements argue that such arrangements are efficient if the incremental cost to each network of terminating traffic originated on the other network is zero. NPRM at ¶ 239. The FCC states that B&K arrangements may be efficient when the efficiency loss is small and the administrative cost of terminating charges is large. NPRM at ¶ 241. The FCC explains that, if there is a positive cost for terminating a call on a competitor's network, but the originating carrier is not charged for sending the call, the originating carrier will have inadequate incentives to compete for customers that initiate large volumes of traffic but receive few calls. NPRM at ¶ 242.

Similarly, if there is no charge to the customer for placing a call that imposes costs on the network of the party called, consumers are likely to initiate an excessive number of calls. The FCC seeks comment on the position taken by some parties who contend that Section 252(d)(2)(B)(i) merely authorizes B&K arrangements in voluntary negotiated arrangements, and that the FCC and the states are prohibited from imposing B&K. NPRM at ¶ 243. The FCC seeks comments on whether the FCC must or should limit the circumstances in which states may adopt B&K to only when either of two conditions are met: (1) the transport and termination costs of both carriers are roughly symmetrical and traffic is roughly balanced in each direction during peak periods; or (2) actual transport and termination costs are so low that there is little difference between cost-based rate and a zero rate. NPRM at ¶ __. The FCC seeks comment on another approach under which the FCC would permit or require states to adopt a variant of B&K, such as that used by Michigan. Additionally, the FCC seeks comment on the historical interconnection arrangements between neighboring ILECs, which in many cases employ a B&K approach with respect to compensation for transport and termination of telecommunications traffic. NPRM at ¶ 243.

The PUCO Staff agrees that B&K arrangements minimize the administrative costs associated with measuring and billing that would be incurred under other compensation methods. The PUCO Staff believes that it is reasonable to make B&K arrangements available to new entrants for a temporary period in order not to delay their entrance to the market, and to provide state commissions with time to gather information to be able to determine: (a) the actual cost incurred by the ILEC to terminate traffic on its network, and (b) the extent to which traffic flow between carriers is in balance. This information will enable the determination of whether B&K arrangements indeed satisfy the Section 252(d)(2)(A) requirement.

Accordingly, the PUCO Staff submits that Section 252(d)(2)(B) authorizes states to impose B&K arrangements in arbitration processes and does not limit states to authorize B&K only if arrived at through voluntary negotiations. We also note that Section 252(e)(2)(B) provides that a state commission may only reject an agreement adopted through arbitration if it finds that the agreement does not meet the requirement of Section 251, or the standards set in Section 252(d). As such, the standards satisfied by Section 252(d)(2), including B&K arrangements, are applicable to arbitrated agreements. The PUCO Staff recommends that imposition of initial B&K arrangements, as well as the ability to impose long-term B&K arrangements consistent with cost-calculation principles, be made available to state commissions to provide maximum flexibility to states during the arbitration process.

Regarding the historical interconnection arrangements between neighboring ILECs, The PUCO Staff recommends that states retain the option to grandfather such arrangements and make them available to new entrants only if the new entrant is similarly situated, i.e., establishing arrangements with neighboring and non-competing ILECs.

g. **Other Possible Standards** (¶ 244)

The FCC asks whether it should establish an interim rule (such as B&K) to apply during a limited initial period while negotiations or arbitration proceedings are ongoing, and a different rule for states to use if called upon to establish long-term arbitrated rates. NPRM at ¶ 244.

Section 252(d)(2)(B)(i) does not preclude B&K arrangements. Therefore, the PUCO Staff believes that the states can impose B&K arrangements when the issue is presented for the state commission's determination. Moreover, the PUCO Staff does not believe that the FCC should limit the circumstances under which the states may adopt such arrangements. In Ohio, Ameritech Ohio recently presented the issue, *inter alia,* of which compensation mechanism for the termination of traffic should be imposed. Case No 96-66-TP-CSS. On March 21, 1996, the PUCO ordered B&K on an interim basis as a simple and reasonable way for two competing companies to interconnect and terminate each other's calls. We also noted that in several other states B&K arrangements have been negotiated or ordered, namely California, Connecticut, Indiana, Michigan, and Washington. We believe that the particular facts and circumstances of each case should dictate the compensation mechanism and, therefore, the FCC should not preclude this option or impose it upon the states and parties during any given period of time.

The FCC seeks comment on different ways to establish rate levels or ceilings for reciprocal compensation, such as basing them on existing arrangements between neighboring ILECs or measured local service rates, or establishing a presumptive uniform per-minute interconnection rate. NPRM AT ¶ 244.

It is the PUCO's opinion that it is necessary to establish a ceiling for reciprocal compensation to facilitate productive negotiations and to aid arbitrators in the arbitration process. The PUCO Staff recommends the use of imputation principles to set that ceiling. The ceiling price should be set such that the ILEC could pass an imputation test for local traffic in the aggregate, i.e., flat-rated, message, and measured local residence and business traffic, at end user rate levels. The PUCO Staff also recommends that states have latitude to establish B&K arrangements for one year from a state-specific date certain, during which LECs can negotiate and state commissions can arbitrate longer term compensation methods, including B&K if consistent with cost causation principles. The PUCO Staff agrees that this approach will permit new competitors to enter the market more quickly, equalize bargaining power between new entrants and ILECs, and reduce the incumbent's incentive to stall negotiations.

D. Duties Imposed on "Telecommunications Carriers" by Section 251(a) (¶¶ 245-249)

The FCC seeks comment on the meaning of "directly or indirectly" in the context of Section 251(a)(1), as well as any other issues raised by this subsection, and whether this subsection is correctly interpreted to allow non-ILECs receiving interconnection requests from another carrier to connect directly or indirectly at their discretion. NPRM at ¶ 248.

The PUCO Staff believes that Section 251(a)(1) imposes the duty on all telecommunications carriers to interconnect directly or indirectly with other telecommunications carriers. We interpret this to mean that it is the requesting telecommunications carrier's duty to establish a direct or indirect interconnection rather than the duty of the receiving telecommunications carrier. Although Section 251(c)(2) places the duty on the ILEC receiving an interconnection request, to provide direct interconnection with the ILEC's network. The PUCO Staff recommends that if a non-ILEC receives an interconnection request from another carrier, it is reasonable to require such non-ILEC to provide interconnection with its network.

F. Exemptions, Suspensions, and Modifications (¶ 261)

The FCC asks whether it should establish standards to assist states in satisfying their obligations under Section 251(f). The FCC tentatively concludes that the states alone have authority to make determinations under Section 251(f)[14]. NPRM at ¶ 261. The PUCO Staff believes that the FCC should not establish standards for the states with regard to Section 251(f) and we agree with the FCC's tentative conclusion. The 1996 Act requires only the states to make determinations regarding rural telephone company exemptions, suspensions, and modifications. Section 251(f) does not require FCC regulations or standards. We believe that, in order for the states to carry out this duty, the states must not be foreclosed by the imposition of FCC-determined standards, even as to what constitutes a "bona fide" request. The 1996 Act directs the FCC to establish regulations to implement Section 251, but the PUCO believes that any such regulations should be a guide for the states' consideration and not hard-and-fast rules that the states are obligated to follow during the arbitration process.

14 The FCC refers to Section 271(f) in stating its tentative conclusion. We believe, however, that the reference to 271(f) was a typographical error and that the FCC was referring to Section 251(f) of the 1996 Act

III PROVISIONS OF SECTIONS 252

A. Arbitration process (¶¶ 264-272)

The FCC questions whether, in this NPRM, it should establish regulations necessary and appropriate to carry out its obligations under Section 252(e)(5), what constitutes notice of failure to act, and what procedures, if any, the FCC should establish for interested parties to notify the FCC that a state commission has failed to act. NPRM at ¶ 265. The PUCO Staff has no opinion on whether, in this NPRM, the FCC should establish regulations necessary and appropriate to carry out its obligations under Section 252(e)(5). The PUCO Staff believes that notice of the state commission's failure to act will occur when a party to the negotiation or arbitration files a written statement with the FCC, alleging the state commission's failure to act, along with a detailed explanation of the basis for that allegation. The PUCO Staff believes that the FCC should require that copies of the notice be served simultaneously upon the other party(ies) to the negotiation or arbitration and the state commission.

Also, the FCC seeks comment on the relationship between Section 252(e)(4) and the FCC's obligation to assume responsibility under 252(e)(5), including, if the FCC assumes responsibility of the state commission, whether it is bound by all of the laws and standards that would have applied to the state commission, and whether the FCC is authorized to determine whether an agreement is consistent with applicable state law as the state would have under Section 252(e)(3). NPRM at ¶ 266.

The PUCO Staff believes that the FCC is entitled to assume the responsibility of the state commission only when the state does not take action upon a petition for arbitration filed pursuant to Section 252(b)(4) within nine months of the LEC receiving the request for negotiations. That is to say that the FCC can only step in to arbitrate an agreement and then review an arbitrated agreement. The FCC should consider the state commission's compliance with any state-established procedures to carry out its duties under Section 252 in order to determine if the state has failed to act and, thus, assume the state commission's jurisdiction. The PUCO Staff believes that, when the FCC assumes the responsibilities of the state commission pursuant to Section 252(e)(5), the FCC should be bound by all of the laws and standards applicable to the involved state, including intrastate telecommunications service quality standards, because the FCC is simply stepping into the shoes of the state commission to fulfill its duties. The PUCO Staff does not believe that Congress intended to create another forum with new rules and standards by assigning this duty to the FCC, but rather, Congress sought to establish able substitute for the state commission. It should be noted that the FCC cannot assume the responsibility of the state commission simply because the state commission does not rule upon a negotiated agreement within 90 days of being adopted by the parties or because the state commission does not rule upon an arbitrated agreement within 30 days of its submission. When the state does not act within those time frames, the agreements are deemed approved. Section 252(e)(4).

Moreover, the FCC asks whether, once it assumes responsibility under Section 252(e)(5), it retains jurisdiction over that matter or proceeding. NPRM at 267. The PUCO Staff believes that the FCC does not retain jurisdiction over matters over which it assumed responsibility because the FCC is only substituting for the state commission "with respect to that proceeding or matter". *See*, Section 252(e)(5). Thus, if a state commission fails to act and the FCC steps in, the FCC's role is simply to arbitrate an agreement and to review the arbitrated agreement. The 1996 Act does not expressly substitute the FCC for the state commission on a permanent basis. Thus, the PUCO Staff believes that future issues, such as interpretation of an arbitrated agreement, or disputes arising between the parties over the implementation of the agreement do not fall within the jurisdiction of the FCC.

The FCC requests comments on whether it should adopt standards or methods for arbitrating disputes in the event it must conduct an arbitration under Section 252(e)(5). NPRM at ¶¶ 268, 270. The PUCO Staff believes that the FCC should adopt standards or methods for arbitrating disputes in the event it must conduct an arbitration under Section 252(e)(5). However, the PUCO Staff believes that those standards should not be applicable to the states. Rather, the PUCO Staff believes that the states should establish their own arbitration procedures. In fact, we in Ohio are currently in the process of establishing such procedures. The PUCO has a docket pending to implement arbitration procedures and it is expected that arbitration procedures will be in place by the end of June 1996.

B. Section 252(i) (¶ 269)

The FCC asks whether Section 252(i) requires requesting carriers to take service subject to all of the same terms and conditions contained in the entire state-approved agreement or whether Section 252(i) permits separation of Section 251(b) and (c) agreements down to the level of the individual provisions of Subsection (b) and (c) and the individual paragraphs of Section 251. NPRM at ¶ 271. Also, the FCC asks for comment on the meaning of the phrase "make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated" in the Report of the Senate Committee on Commerce, Science and Transportation. NPRM at ¶271. Additionally, the FCC asks whether the agreement should be made available for an unlimited period or whether the statute would permit the terms of the agreement to be available for a limited period of time. NPRM ¶ 272.

The PUCO Staff believes that a requesting carrier may still negotiate the various interconnection, service, or network terms, but if it requests a particular interconnection, service, or network element in an existing, approved contract, the other LEC must provide that term under the same terms and conditions. The PUCO Staff does not believe that "under the same terms and conditions" necessarily mean under the exact terms of the entire contract. If that interpretation were correct, the first state-approved contract to which an ILEC is a party would be the only format in which every term of that contract could be provided. The 1996 Act cannot be interpreted in such a way as to eliminate virtually all subsequent negotiations. The phrase "under the same terms and conditions" is intended to require LECs to offer particular elements under substantially similarly terms and conditions when reasonable, appropriate, and warranted. In other words, state arbitrators must determine the scope of reasonably related "terms and conditions" on a case by case basis. Finally, the PUCO Staff believes that the parties should negotiate the term of the contract. If an arbitration is conducted, then the arbitrators, and the state commission when it reviews the arbitrated agreement, should determine the contract length. The PUCO Staff believes that an unlimited period is inappropriate. Furthermore, since the 1996 Act does not specifically address the lengths of the carrier contracts, the FCC should not establish one or require them to be indefinite. As competition progresses, the parties should be able to re-negotiate their interconnection agreements.

CONCLUSION

In closing, the PUCO and its Staff wish to thank the FCC for the opportunity to file comments in this docket.

Respectfully submitted,

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ATTACHMENT

A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation Relative to Expanded Interconnection with Local Telephone Company Facilities.	Case No. 92-1992-TP-COI

FINDING AND ORDER

The Commission, having thoroughly considered all of the comments and relevant filings submitted in this docket, issues its Finding and Order.

OPINION:

I. Background

On September 17, 1992, the Federal Communications Commission (FCC), among other things, adopted a Report and Order In the Matter of Expanded Interconnection with Local Telephone Company Facilities CC Docket No. 91-141 (91-141 Order).[1] The 91-141 Order sets forth the conditions under which entities will be permitted, for the first time, to interconnect their special access services

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1. There have been numerous subsequent proceedings involving 91-141 which will be explained herein. Notably, nine LECs, including Bell Atlantic Telephone Companies, BellSouth Corporation and BellSouth Telecommunications, Inc., Cincinnati Bell Telephone Company, GTE Service Company, Lincoln Telephone and Telegraph Company, Pacific Bell and Nevada Bell, The Southern New England Telephone Company, Southwestern Bell and United Telephone Companies, filed for a stay of the mandatory physical and virtual collocation requirements in 91-141. Instead, these LECs suggested that they be directed to provide their choice of physical or virtual collocation only in response to bona fide requests. Ameritech Operating Companies also sought a stay of the physical requirement but not the virtual collocation requirement. On December 18, 1992, the FCC denied the requests for stay. Thereafter, on December 22, 1992, all of the aforementioned LECs filed, in the United States Court of Appeals for the District of Columbia Circuit (Appeals Court), for a stay of the FCC's 91-141 Order pending review. The FCC filed an opposition to the LECs' petition for stay at the Appeals Court on January 5, 1993. The Appeals Court, on January 20, 1993, denied the request for stay of the FCC's 91-141 Order.

with Tier 1 local exchange companies[2] (LECs). The FCC's 91-141 Order also directed the Tier 1 LECs to file expanded interconnection tariffs for special access within 120 days or by February 16, 1993. In making its decision, the FCC acknowledges that this is "a historic step in the process of opening the remaining preserves of monopoly telecommunications service to competition."

The FCC's 91-141 Order specifically directs Tier 1 LECs to offer physical collocation, unless one of two exceptions discussed in more detail below are met, to all entities seeking to interconnect with LEC central office facilities (CO's) through either fiber optic systems or, where reasonably feasible, microwave transmission facilities; clarified that the interconnection requirements addressed therein only applies to CO equipment necessary to terminate basic transmission facilities including, optical terminating equipment and multiplexers; required the LECs to create new connection charge elements and tariff different connection charge subelements[3] for services provided to interconnectors

2. Tier 1 LECs are defined by the FCC as companies having annual revenues from regulated telecommunication operations of $100 million or more.

3. Under the FCC proposal, the LECs offering physical collocation are required to tariff, at study-wide averaged rates, the cross connect element and any contribution charge that may be permitted in the future. Moreover, the FCC found that floor space may vary by CO but should be uniform for all interconnectors within a particular CO. Thus, charges for floor space are to be tariffed on a uniform charge per square foot basis. The FCC also found that LECs should be able to recover reasonable LEC-tariffed charges from interconnectors for labor and materials necessary for initial site preparation of CO space. Finally, under physical collocation, the FCC determined that other reasonably standardized items such as power, environmental conditioning and use of riser and conduit space should be tariffed for each CO.

Under virtual collocation, the FCC concluded that, aside from the cross connect and contribution charges addressed above, the LECs should tariff installation, repair and maintenance charges of CO electronic equipment dedicated to interconnectors use. Additionally, the FCC determined that the rates, terms and conditions for different types of CO electronic equipment, under virtual collocation, are best suited to negotiation in order to reflect individual circumstances. Therefore, while the LECs and interconnectors are permitted to negotiate the aforementioned terms and conditions, the LECs are required to file those rates, terms and conditions as tariffs which then must be offered to all similarly situated interconnectors.

as opposed to formal unbundling of the current special access rate structure; refused to allow the LECs to recover, at this time, a contribution charge from all interconnectors; and gave the LECs, once an interconnector obtains a cross connect element, additional pricing flexibility in order to compete in this new competitive marketplace.[4]

Traditionally, this Commission has mirrored the FCC's policies regarding access-type services.[5] However, being aware that the FCC was considering the issues surrounding interconnection, staff began meeting informally with interested intrastate stakeholders[6] with the goal of setting forth an access-type proposal for future Ohio needs and allowing interested entities an opportunity to respond. The goal of this proceeding was to address the issues surrounding special access interconnection and determine Ohio's future intrastate special access interconnection policy.

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4. Specifically, the FCC has permitted Tier 1 LECs to establish a system of traffic density-related zones within each study area and assign each CO, or if a LEC chooses exchange areas, to one of the zones. Rates within each zone, however, will still be averaged. It is incumbent upon the LECs to show that the assignment of CO's to zones reflects cost-related characteristics.

The FCC has also generally approved of tariffed volume and term discounts as well as tariffed distance sensitivity discounts although the FCC has pledged to review the highest current LEC-offered discounts to determine if guidelines need to be established. Further, the FCC is allowing certain LEC customers with long term access arrangements to take a "fresh look" within 90 days after interconnection has been purchased in a CO to determine if they wish to utilize a competitive alternative to the LECs offerings.

5. Our current access policies are embodied in Case No. 83-464-TP-COI In the Matter of the Commission Investigation Relative to the Establishment of Intrastate Access Charges.

6. Those interested entities that staff met with informally included representatives of Metropolitan Fiber Systems, Inc.; MetroComm Fiber Optic Network; Ohio Linx; Online Computer Library Center, Inc.; Ohio Department of Administrative Services; LTV Steel; The Limited; Banc One Corporation; Battelle Memorial Institute; Honda of America, Inc.; The Ohio State University; The Ohio Company; Centerior; CompuServe Incorporated; Mead Data; AT&T Communications of Ohio, Inc.; Sprint Communications Company, L.P.; The Ohio Telephone Association; The Ohio Bell Telephone Company; Cincinnati Bell Telephone Company; United Telephone Company of Ohio; GTE North Incorporated; and ALLTEL of Ohio, Inc.

Upon further review of the FCC's Order and the timeframes embodied therein, there was one specific item that the Commission determined needed immediate attention.[7] Specifically, the FCC mandated that all Tier 1 LECs make physical collocation available to all interconnectors at all LEC central offices and other locations which serve as rating points.[8] Under this approach, according to the FCC, the parties remain free to negotiate satisfactory virtual collocation arrangements if such arrangements are preferable to physical collocation from the standpoint of both parties. The FCC envisioned only two situations which would warrant an exemption from the physical collocation requirement. The first being that a LEC could demonstrate that a particular CO lacks the required space in order to accommodate physical collocation. The second being a formal final decision by a state legislature or public utility regulatory agency, after proceedings allowing all interested persons a reasonable opportunity to be heard, finding in favor of virtual collocation or in favor of allowing LECs to choose which form of interconnection to use for intrastate expanded interconnection. The FCC then concluded by stating that "this is the only instance in which the (FCC's) interest in ensuring physical collocation for interstate services should give way to a state's preference for virtual collocation." The final formal state decision discussed above must be filed by the Tier 1 LECs on or before the initial interstate tariff offerings are to be filed on February 16, 1993.

Recognizing the timeframe imposed by the FCC in which to act on this collocation position the Commission, by Entry issued November 12, 1992, opened this proceeding in order to evaluate this state's position on expanded interconnection generally and to

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7. The Commission acknowledged that, in the near future, an entry would be issued which comprehensively details staff's proposal on special access interconnection and would allow all interested entities ample time to respond. However, due to the timeframes involved and the requirement that a final state decision on collocation must be completed by February 16, 1993, the Commission believed it was prudent to ask for interested entities' comments on staff's collocation recommendation at this time.

8. The FCC, pursuant to its own motion on December 18, 1992, modified this provision somewhat. Under its present standard, the FCC is requiring all Tier 1 LECs to offer physical collocation at a subset of COs pursuant to lists submitted by the effected LECs. However, the FCC also developed a procedure whereby, until January 15, 1993, interested interconnectors could submit their own lists to supplement those lists filed by the Tier 1 LECs. The FCC also established a procedure whereby COs could be added to the list, upon bona fide request, after the interstate tariffs are filed.

examine specifically the issues involved in physical and virtual collocation. In order to focus the comments in this proceeding on the specific issues surrounding collocation, the Commission appended staff's recommendation to the November 12, 1992 Entry. All interested entities were invited to comment on staff's proposal by December 4, 1992, and to file reply comments by December 18, 1992.[9]

Initial comments or reply comments or both were filed by the following entities: AT&T Communications of Ohio, Inc. (AT&T); Cablevision Lightpath, Inc. (Cablevision); Centel Cellular Company (Centel); Cincinnati Bell Telephone Company (CBT); The Chillicothe Telephone Company (Chillicothe); Coalition of Ohio Competitive Access Providers (Coalition)[10]; GTE North Incorporated (GTE); Independent Cellular Network (ICN); New Par Companies (New Par)[11]; The Office of the Consumers' Counsel (OCC); The Ohio Bell Telephone Company (Ohio Bell); Ohio Cable Television Association (OCTVA); The Ohio Telephone Association (OTA); Ohio Public Communication Association (OPCA) and Cellnet of Ohio, Inc. (Cellnet); Sprint Communications Company L.P. (Sprint); and United Telephone Company of Ohio (United).[12]

II. Procedural Matters

a) Motions for Public Hearings

Prior to entering into a discussion of the comments filed

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9. Based upon a request by Cablevision Lightpath, Inc., the comment periods, on November 27, 1992, were extended in order to give all entities an adequate opportunity to respond to staff's collocation position. Thereafter, initial comments were due on December 16, 1992, and reply comments were due on January 5, 1992.

10. The Coalition members include Cablevision; FiberNet Telecommunications Cincinnati, Inc.; MetroComm Fiber Optic Network; Metropolitan Fiber Systems of Cleveland; Metropolitan Fiber Systems of Columbus; and Ohio Linx.

11. The New Par Companies include Northern Ohio Cellular Telephone Company; Akron Cellular Telephone Company; Canton Cellular Telephone Company; Columbus Cellular Telephone Company; Dayton Cellular Telephone Company; Hamilton Cellular Telephone Company; Springfield Cellular Telephone Company; and Southern Ohio Telephone Company.

12. In addition, OCOM Corporation submitted a letter expressing its interest in this proceeding but did not file initial or reply comments.

regarding the staff's p :posed collocation standard, there are a number of outstanding procedural issues which need to be addressed. For instance, on November 24, 1992, Cablevision filed a motion for a public hearing on staff's collocation recommendation. In support of its motion, Cablevision alleges that due process and the FCC's directive that parties have a reasonable opportunity to be heard require a public hearing. Moreover, issues surrounding physical versus virtual collocation are fact dependent, thus, requiring a public hearing. MetroComm, FiberNet and Ohio Linx also submitted, on December 15, 1992, a joint motion for an evidentiary hearing. As further support for a factual hearing, these entities allege that issues such as the quality and reliability of virtual and physical collocation, the increased cost to interconnectors of virtual collocation and the uncertainty of allocation and separations of costs involved in the ambiguous demarcations associated with virtual collocation would more fully be appreciated through an evidentiary hearing.

Further, MFS and MCI Telecommunications Corporation (MCI), on December 8 and December 14, 1992, respectively, filed motions seeking a formal evidentiary hearing. In support of their positions, MFS and MCI argue that Section 4905.26, Revised Code, requires the Commission to give notice and conduct an evidentiary hearing before ordering a change which affects any public utility "fare, charge. . .schedule, classification, or service rendered." See also Ohio Bell Tel. Co. v. Pub. Util. Comm., 64 Ohio St.3d 145, 593 N.E.2d 286 (1992) (evidentiary hearing required before rate change); MCI Telecommunications Corp. v. Pub. Util. Comm., 38 Ohio St.3d 266, 527 N.E.2d 777 (1988)(evidentiary hearing required before establishing mechanism for determining intrastate access charges). Further, according to MFS and MCI, the formal hearing and notice requirement of Section 4905.26, Revised Code, is not optional. Finally, MFS and MCI allege that the notice and comment format the Commission intends to employ here is valid only "as an expedient means of following up an actual public hearing." Ohio Bell, 64 Ohio St.3d at 148, 593 N.E.2d at 288.

On December 9, December 18 and December 23, 1992, Ohio Bell submitted various responses to the motions for an evidentiary hearing. Regarding Cablevision's motion, Ohio Bell argues that participation in Commission proceedings is statutorily, not constitutionally, based and that Cablevision is not statutorily entitled to public hearings in this matter. Moreover, evidentiary hearings are poorly suited to expeditious decision making, particularly when policy is being developed. Regarding the motions submitted by MFS and MCI, Ohio Bell posits that reliance on the Ohio Bell and MCI cases is unfounded in that those cases involved rate issues. By contrast, according to Ohio Bell, this docket does not involve rate setting issues and is not a rate change proceeding. Rather, this proceeding represents a review of this